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IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE WITH
§ 271 OF THE TELECOMMUNICATIONS
ACT OF 1996

Docket No. T-00000A-97-0238

QWEST'S OPPOSITION TO MOTIONS
TO STRIKE COMMENTS

**QWEST CORPORATION'S RESPONSE TO MOTIONS OF JOINT
INTERVENORS TO STRIKE QWEST'S COMMENTS**

Qwest Corporation ("Qwest") submits its response in opposition to two separate motions to strike Qwest's comments filed by AT&T Communications of the Mountain States, Inc., TCG Phoenix and WorldCom, Inc., on behalf of its regulated subsidiaries, (collectively the "Joint Intervenors") in this proceeding. The Joint Intervenors move to strike comments filed by Qwest on the Staff's Final Emerging Services and Resale Reports. For the reasons set forth below, both of the motions to strike filed by the Joint Intervenors should be denied.

INTRODUCTION

A. *Resale Comments*

On June 29, 2001, Staff issued its Draft Report on Qwest's Compliance with Checklist Item No. 14 – Resale ("Draft Resale Report"). Qwest did not file comments on the Draft Resale Report. Staff issued its Final Report on Qwest's Compliance with Checklist Item No. 14 – Resale ("Final Resale Report") on July 27, 2001. Qwest filed comments on the Final Resale Report on August 6, 2001. The Joint Intervenors have moved to strike these comments.

B. *Emerging Services Comments*

Arizona Corporation Commission

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On July 9, 2001, Staff issued its Draft Report on Qwest's Compliance with its Emerging Services obligations ("Draft Emerging Services Report"). Qwest filed comments on the Draft Emerging Services Report on July 19, 2001. On August 1, 2001, Staff issued its Final Report on Qwest's Compliance with its Emerging Services obligations ("Final Emerging Services Report"). In its Final Emerging Services Report, Staff modified a number of issues and made various recommendations to the Commission that were not included in the Draft Emerging Services Report. In an effort to provide the Commission with its views on the recommendations raised for the first time in the Final Emerging Services Report, Qwest filed comments on the Final Emerging Services Report on August 13, 2001. The Joint Intervenors have moved to strike Qwest's comments filed on the Final Emerging Services Report.

DISCUSSION

The plain purpose of the Staff report and party comment process established under the procedural order is to ensure that the Commission has the benefit of comments on all issues and on all of Staff's recommendations regarding those issues prior to issuing its own recommendations in this docket. Based on an unduly restrictive reading of the Procedural Order governing these proceedings, the Joint Intervenors would deprive the Commission of this benefit as it relates to the Final Resale and Emerging Services Reports.

A. There Is No Duplication.

To be clear, the Joint Intervenors do not contend that Qwest has filed duplicative comments on the reports at issue. Rather, in each instance the Joint Intervenors seek to strike Qwest's first attempt to discuss recommendations raised in the reports. For example, as to the comments filed on the Final Resale Report, because Qwest did not file comments on the Draft Resale Report, the comments filed in response the Final Report are not duplicative of anything else filed by Qwest in this proceeding. They bear directly on the recommendations of the Staff

and are offered to aid the Commission in reaching its own recommendations regarding Qwest's compliance with this checklist item under section 271 of the Act.

Similarly, as noted above, Qwest's comments on the Final Emerging Services Report only go to issues raised and recommendations not included in the Draft Emerging Services Report – they were made by the Staff for the first time in the Staff's Final Report. Again, there is no duplication. Instead, consistent with the approach embodied in the procedural order, Qwest has provided the Commission with its comments regarding issues raised and recommendations made for the first time in the final report. Absent these comments, the Commission will be left without the aid of party comment on these issues and recommendation.

B. The Joint Intervenors will Suffer No Prejudice if the Comments at Issue Remain in the Record.

There is no prejudice to the Joint Intervenors by allowing the comments at issue to remain in the record of this proceeding. First, as to the comments on the Final Resale Report, because Staff's Final Resale Report is virtually identical to the draft report, Qwest's comments on the Final Resale Report are virtually identical to those which it could have filed on the draft report. Further, because there is no provision in the Procedural Order providing for reply comments, the Joint Intervenors cannot plausibly argue that the timing of Qwest's filing deprived them of any opportunity to participate in this docket in any meaningful way.

Likewise, the Joint Intervenors cannot credibly claim that they suffer any prejudice from allowing the record to include comments made by Qwest on issues that were raised for the first time in the Final Emerging Services Report.

C. Exclusion of the Comments Would Harm Qwest and Unduly Hamper the Commission's Review of Staff's Recommendations.

Qwest would suffer significant harm if the motions are granted. As to the Resale Report, if the Commission grants the Joint Intervenors' motion, Qwest would be deprived of an opportunity to provide any comments on this checklist item to the Commission. And as to the

Final Emerging Services Report, striking of Qwest's comments on this report would similarly deprive Qwest of an opportunity to comment on a number of issues raised for the first time in the final report which bear directly on the Commission's deliberations on emerging services.

Moreover, exclusion of the comments would unduly restrict the Commission's ability to critically examine Staff's recommendations. Only by allowing Qwest's comments on these reports to remain in the record will the Commission have a record that includes comments from all interested parties on all of the issues that are relevant to resale and emerging services. Joint Intervenor's motions should be denied.

CONCLUSION

For the foregoing reasons, the Commission should deny the motions to strike filed by the Joint Intervenor's.

Respectfully submitted,

QWEST CORPORATION

By: 

Charles W. Steese
QWEST CORPORATION
1801 California Street, Suite 4900
Denver, CO 80202
(303) 672-2709

Timothy Berg
Theresa Dwyer
FENNEMORE CRAIG, P.C.
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012
(602) 916-5421

Attorneys for Qwest Corporation

DATED: August 28, 2001

**ORIGINAL and 10 copies of the foregoing filed
this 28th day of August, 2001 with:**

Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

**COPY of the foregoing hand-delivered
this 28th day of August, 2001, to:**

Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Steve Olea, Acting Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Lyn Farner, Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

Caroline Butler
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

**COPY of the foregoing mailed and/
or e-mailed
this 28th day of August, 2001, to:**

Steven H. Kukta
Sprint Communications Company, LP
1850 Gateway Drive, 7th floor
San Mateo, CA 94404-2567

Eric S. Heath
Sprint Communications Company , L.P.
100 Spear Street, Suite 930
San Francisco, CA 94105

Thomas Campbell
Lewis & Roca
40 N. Central Ave.
Phoenix, AZ 85004

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Ave., 21st Floor
PO Box 36379
Phoenix, AZ 85067-6379

Thomas F. Dixon
Karen L. Clausen
Worldcom, Inc.
707 17th Street # 3900
Denver, CO 80202

Scott S. Wakefield
Residential Utility Consumer Office
2828 North Central Ave., Suite 1200
Phoenix, AZ 85004

Michael M. Grant
Todd C. Wiley
Gallagher & Kennedy
2575 E. Camelback Rd.
Phoenix, AZ 85016-9225

Michael Patten
Roshka Heyman & DeWulf
400 North Fifth St., Ste. 1000
Phoenix, AZ 85004-3906

Bradley Carroll, Esq.
Cox Arizona Telcom, LLC
1550 West Deer Valley Rd.
Phoenix, AZ 85027

Daniel Waggoner
Davis, Wright & Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Traci Grundon
Davis Wright & Tremaine
1300 S.W. Fifth Avenue
Portland, OR 97201

Richard S. Wolters
Maria Arias-Chapleau
AT&T Law Department
1875 Lawrence Street # 1575
Denver, CO 80202

David Kaufman
e.spire Communications, Inc.
343 W. Manhattan Street
Santa Fe, NM 87501

Alaine Miller
XO Communications, Inc.
500 108th Ave. NE, Suite 2200
Bellevue, WA 98004

Diane Bacon, Legislative Director
Communications Workers of America
5818 N. 7th St., Suite 206
Phoenix, Arizona 85014-5811

Philip A. Doherty
545 South Prospect Street, Suite 22
Burlington, VT 05401

W. Hagood Bellinger
5312 Trowbridge Drive
Dunwoody, GA 30338

Joyce Hundley
U.S. Dept. of Justice
Antitrust Division
1401 H Street, NW, # 8000
Washington, DC 20530

Andrew O. Isar
Telecommunications Resellers Association
4312 92nd Ave., NW
Gig Harbor, WA 98335

Raymond S. Heyman
Randall H. Warner
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, AZ 85004-3906

Douglas Hsiao
Rhythms Links, Inc.
6933 Revere Parkway
Englewood, CO 80112

Mark Dioguardi
Tiffany and Bosco, PA
500 Dial Tower
1850 N. Central Avenue
Phoenix, AZ 85004

Thomas L. Mumaw
Snell & Wilmer
One Arizona Center
Phoenix, AZ 85004-0001

Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Annapolis Junction, MD 20701

Patricia Van Midde
Assistant Vice President
AT&T
111 West Monroe
Suite 1201
Phoenix, AZ 85003

Gena Doyscher
Global Crossing Services, Inc.
1221 Nicollet Mall
Minneapolis, MN 55403-2420

Andrea Harris, Senior Manager
Allegiance Telecom, Inc. of Arizona
2101 Webster, Ste. 1580
Oakland, CA 94612

Gary L. Lane, Esq.
6902 East 1st Street, Suite 201
Scottsdale, AZ 85251

J. David Tate
Senior Counsel
SBC Telecom, Inc.
5800 Northeast Parkway, Suite 125
San Antonio, Texas 78249

M. Andrew Andrade
Tess Communications, Inc.
5261 S. Quebec Street Ste. 150
Greenwood Village, CO 80111

K. Megan Doberneck, Esq.
Covad Communications
4250 Burton Street
Santa Clara, CA 95054

Richard Sampson
Z-Tel Communications, Inc.
601 S. Harbour Island, Ste. 220
Tampa, Florida 33602

Dana P. McBride